Office Supreme Court, U.S.
FILED
OCT 31 1983
ALEXANDER L. STEVAS,

No. 83-177

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1983

PATRICIA M. LETNES, individually, and on behalf of Terrence A. Letnes
Petitioner,

vs.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT,
Respondent,

and

WAIG AIRCRAFT, INC., KENNY WHITE, GARY GARRETT, ROGER IVERSON,
Real Parties in Interest.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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ARGUMENT

The order below should not be reviewed because the order from the United States Court of Appeals, Ninth Circuit, is consistent with this Court's most recent pronouncement on this issue in *Aldinger v. Howard*, 427, U.S. 1 (1976) and is not in conflict with decisions in the other Circuit Courts of Appeals on this issue.

1. In *Aldinger v. Howard*, 427 U.S. 1 (1976), the United States Supreme Court affirmed the decision on jurisdiction of the United States Court of Appeals for the Ninth Circuit.

The Court of Appeals held:

> " . . . While with respect to litigation where nonfederal questions or claims were bound up with the federal claim upon which the parties were already in federal court, there is nothing in Art. III's grant of judicial power that prevents adjudication of the nonfederal portions of the parties' dispute, it is quite another thing to permit a nonfederal claim in turn to be the basis for joining a party over whom no independent federal jurisdiction exists, simply because that claim derives from the "common nucleus of operative fact", giving rise to the dispute between the parties to the federal claim."

Thus the Ninth Circuit Court of Appeals has once again rendered its decision in this case consistent with its decision in *Aldinger* which was affirmed by this Court.

2. The decision below is not in conflict with decisions rendered on the same issue in other Circuits. The cases cited by Petitioner to raise the issue of a conflict in a decision amongst the Circuits are cases in which the decision was rendered prior to *Aldinger*. We would assume the reason that

this court accepted certiorari in the *Aldinger* case was to resolve the conflict amongst the Circuits in those cases. The Petitioner cites *Almenares v. Wyman*, 453 F.2d 1075 (2nd Cir.) decided in 1971; *Jacobsen v. Atlantic City Hospital*, 392 F.2d 149 (3rd Cir.) decided in 1968; *Stone v. Stone*, 405 F.2d 94 (4th Cir.) decided in 1968; *F.C. Stiles Contracting Company v. Home Insurance Company*, 431 F.2d 917 (6th Cir.) decided in 1970; and *Schulman v. Huck Finn, Inc.*, 472 F.2d 864 (8th Cir.) decided in 1973.

It is the position of the real parties in interest that Petitioner's opinion is inconsistent with the ruling of this Court in *Aldinger*. Petitioner is asking this Court to broaden the concept of pendent jurisdiction to include state law claims over which there is no independent basis of federal jurisdiction, strictly on the concept of judicial economy and convenience. Although we recognize that judicial economy and convenience should be considered by the Court along with other compelling factors, we hardly see it as a controlling and sole factor for this Court to permit the concept of pendent jurisdiction to be extended to all cases and leave the discretion of jurisdiction in the federal courts to the trial judge.

This case presents a clear set of circumstances for the Court to uphold its principals previously pronounced in *Aldinger*. There is no argument that the litigation derives from a common nucleus of operative fact. There is no argument that a claim under the Federal Torts Claim Act must be filed in the Federal Court. There is no argument that the claim against the real parties in interest is a state-law claim over which there is no independent basis of federal jurisdiction. Thus, the only relationship with the facts in this case and the application of federal jurisdiction would be that judicial economy and

convenience outweighs any other consideration. Pendent jurisdiction has no application in this case. Pendent jurisdiction is proper when the parties are already before the Federal Courts or where a federal claim and a state claim are against the same party. Neither of those situations are present in this case. To decide otherwise, this Court would have to erode completely the requirements of pendent jurisdiction. This Court in *Aldinger* addressed this very issue.

> "From a purely factual point of view, it is one thing to authorize two parties, already present in federal court by virtue of a case over which the court has jurisdiction, to litigate in addition to their federal claim a state-law claim over which there is no independent basis of federal jurisdiction. But it is quite another thing to permit a plaintiff, who has asserted a claim against one defendant with respect to which there is federal jurisdiction, to join an entirely different defendant on the basis of a state-law claim over which there is no independent basis of federal jurisdiction, simply because his claim against the first defendant and his claim against the second defendant "derive from a common nucleus of operative fact." Ibid. True the same considerations of judicial economy would be served insofar as plaintiff's claims "are such that he would ordinarily be expected to try them all in one judicial proceeding . . . " Ibid. But the addition of a completely new party would run counter to the well-established principle that federal courts, as opposed to state trial courts of general jurisdiction, are courts of limited jurisdiction marked out by Congress."

CONCLUSION

The issues presented by this case have already been decided by this Court. The United States Court of Appeals for the Ninth Circuit's ruling in this case conforms to the most recent decision of this Court on the issue of jurisdiction. As a conforming decision, it should not be a proper subject matter for this Court to review. The only basis that Petitioner presents for permitting the federal courts to retain jurisdiction in this case is that of judicial economy and convenience, which in and of itself should not be sufficient to overshadow the provisions of Article III of the United States Constitution or Acts of Congress.

For the reasons set forth above, it is respectfully submitted that this Petition for Writ of Certiorari should be denied.

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